

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-326
Administrative Law Judge Division
February 25, 2016

RESOLUTION

RESOLUTION ALJ-326. Resolves the Appeal K.15-05-020 of Citation No. LAX-978 to Foothill Executive Limousine Inc. (PSG 16410 & PSG 22114).

SUMMARY

This resolution denies the appeal of Citation No. LAX-978 issued to Foothill Executives Limousine Inc. by the California Public Utilities Commission's (Commission) Safety and Enforcement Division on April 29, 2015. Citation No. LAX-978 imposed a fine of \$500 for one violation of the Public Utilities Code and the Commission's General Order 157-D on April 29, 2015, for failure to produce a waybill in connection with the driver's presence at the Los Angeles International Airport. Citation LAX-978 is affirmed.

BACKGROUND

The California Public Utilities Commission (Commission) regulates charter-party carriers of passengers primarily pursuant to the Passenger Charter-Party Carriers' Act (Pub. Util. Code § 5351, et seq.)¹ Pursuant to Resolution (Res.) ALJ-187, issued by the Commission on September 22, 2005, the Commission's Safety and Enforcement Division (SED)² is authorized to issue citations to various classes of transportation carriers for violation of the Public Utilities Code and/or Commission orders. In turn, a carrier

¹ Unless otherwise indicated, all statutory references are to the Public Utilities Code.

² ALJ-187 confers authority on the Consumer Protection and Safety Division now known as the Safety and Enforcement Division.

issued such a citation may accept the fine imposed or contest it through a process of appeal under Res. ALJ-187 and Res. ALJ-299.³

On April 29, SED issued Citation LAX-978 for violations of Public Utilities Code to Foothill Executive Limousine Inc. (Foothill). The citation occurred during a field inspection at Terminal 7 at the Departure Level of the airport, and the California Highway Patrol and Los Angeles Airport police were also present. The citation was issued for the following violation:

1. Failure to produce a valid waybill upon request in violation of Pub. Util. Code § 5360.5 and General Order 157-D, Part 3.01 [one count].

APPEAL

Foothill filed a timely appeal of Citation LAX-978 and the Commission granted the request for an appeal hearing. The appeal hearing was held on October 5, 2015. Foothill and SED appeared as parties at the scheduled hearing. During the evidentiary hearing, SED introduced:

SED 1: Filed Citation LAX-978 and Inspection Observation Report

SED 2: Comparison Chart of Fines Imposed by SED for similar violations

These two exhibits were admitted into the record of this appeal. The evidentiary record was submitted on October 5, 2015.

RESOLUTION OF THE APPEAL

Violation of Pub. Util. Code § 5360.5 and General Order (GO) 157-D, Part 3.01

Pub. Util. Code § 5360.5 and GO 157-D provide, *inter alia*, that every charter party carrier of passengers shall operate on a prearranged basis within this state and the driver shall possess a waybill with specified information about the fare.

Foothill contends that if a violation occurred it should be attributed to the driver, Gagik Markarian, not to Foothill, and that the \$500 penalty is excessive.⁴ Foothill's owner testified that the driver took the car without permission for the purpose of making a private trip to the airport. SED's investigator, Mariam Yani, testified that the

³ The Commission issued Res. ALJ-299 on June 26, 2014, for application beginning on January 1, 2015.

⁴ Reporter's Transcript (RT) at 27, 33, 37.

vehicle bore the TCP number for Foothill, and the driver stated he had no waybill and offered no other explanation.⁵

The evidence shows that Foothill violated Pub. Util. Code § 5360.5 and GO 157-D, Part 3.01, by its driver's failure to possess or provide for inspection of a waybill to authenticate the transportation was provided on a prearranged basis.

Application of Violation to Foothill

Pub. Util. Code § 5354 provides:

In construing and enforcing the provisions of this chapter relating to the prescribed privileges and obligations of a permit or certificate issued hereunder, the act, omission, or failure of any officer, agent, or employee, or person offering to afford the authorized service with the approval or consent of the permit or certificate holder, is the act, omission, or failure of the permit or certificate holder.

Foothill admitted that the driver was employed at the time by Foothill. As a result, any act or omission by Foothill's driver that does not comply with § 5360.5 or GO 157-D is a violation by the permit or certificate holder, Foothill.

Pursuant to GO 157-D, Part 3.01, every charter-party carrier requires certain information to be included on a waybill or trip report. The waybill shall include:

1. Name of carrier and TCP number.
2. Vehicle license plate number
3. Driver's name.
4. Name and address of person requesting or arranging the charter.
5. Time and date when charter was arranged.
6. Whether the transportation was arranged by telephone or written contract.
7. Number of persons in the charter group.
8. Name of at least one passenger in the traveling party, or identifying information of the traveling party's affiliation.
9. Points of origination and destination.

⁵ RT at 6-8.

A waybill or trip report may be kept in electronic or hardcopy format.⁶ However, Part 3.01 provides:

Upon request, the driver shall show the waybill to any Commission or airport enforcement officer, or to any official of a city, county, or city and county authorized to inspect waybills pursuant to Pub. Util. Code § 5371.4.

The evidence establishes that Foothill failed to produce either a hard copy or electronic copy of a waybill for the date and time of the transportation at issue when requested by the Commission. As a result, Foothill violated Pub. Util. Code § 5360.5 and GO 157-D, Part 3.01.

The Penalty Amount

SED proposed a fine of \$500 for the violation. SED's witness, John Roldan, testified that he proposed the \$500 fine based on a review of fines imposed for similar violations. SED submitted a document to support its claim that "it is standard for SED to issue a \$500 fine for this type of violation."⁷

Foothill offered no evidence that the fine was excessive, instead continuing its claim that any fine was not applicable to Foothill, as the permit holder.

The evidence establishes that a \$500 fine is reasonable for this violation. As a result, Foothill is liable for a \$500 fine for violation of § 5360.5 and GO 157-D, Part 3.01.

SAFETY

The Commission has broad authority to regulate charter-party carriers, particularly with regard to safety concerns. (See for example, Pub. Util. Code §§ 451, 5382 and 5387.) We are mindful that the statutory schemes under which this citation was issued in this case for failure to produce a waybill, are intended to secure the safety of charter-party carrier passengers.

COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of

⁶ Pub. Util. Code § 5381.5(a)(1)(2)(b).

⁷ SED-02; RT at 21.

the Commission on the resolution. A draft of today's resolution was distributed for comment by the interested parties. No comments were received.

ASSIGNMENT OF PROCEEDING

Melanie M. Darling is the assigned Administrative Law Judge for this citation appeal.

FINDINGS

1. Gagik Markarian was an employee of Foothill Executive Limousine Inc. on April 29, 2015.
2. An inspector from the Commission's SED division conducted a field inspection of the vehicle and driver on April 29, 2015 at Los Angeles World Airports.
3. When asked by SED's inspector, Foothill's driver did not produce a waybill in support of the vehicle's presence at the airport as prearranged transportation, nor explain its absence.
4. Failure to produce a waybill upon request of the Commission is a violation of Pub. Util. Code § 5360.5 and GO 157-D, Part 3.01 by Foothill Executive Limousine Inc.
5. A fine of \$500 for a first violation is reasonable.

THEREFORE, IT IS ORDERED that:

1. Citation LAX-978 is affirmed.
2. No later than 30 days from the effective date of this resolution, Foothill Executive Limousine Inc. must pay a penalty of \$500 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, California 94102. Foothill Executive Limousine Inc. must write on the face of the check or money order, "For deposit to the General Fund per Resolution ALJ-326."

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, 2016, the following Commissioners voting favorably thereon:

Timothy J. Sullivan
Executive Director

*****SERVICE LIST*****

**APPEAL K1505020 – OF CITATION NO. LAX-978 OF
FOOTHILL EXECUTIVE LIMOUSINE INC.**

Parties

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